

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-2015

To be argued by
SHEILA GINSBERG

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
CRUZ ESCOBAR-NEGRON,

Appellant,

-against-

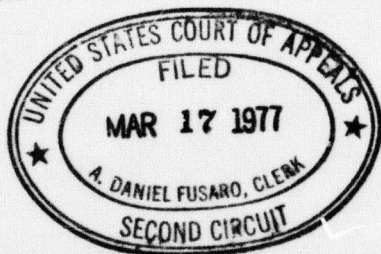
UNITED STATES OF AMERICA,

Appellee.
-----X

Docket No. 77-2015

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
CRUZ ESCOBAR-NEGRON
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

SHEILA GINSBERG,
Of Counsel.

B
D/S

PAGINATION AS IN ORIGINAL COPY

72CR1245

COSTANTINO, J.

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U. S.:

278

X LYDIA GUZMAN, a/k/a
Carmen Rivera and
X CRUZ ESCOBAR-NEGRON,
a/k/a Carlos Rivera

For Defendant:

Possession with intent to distribute heroin.

ABSTRACT OF COSTS	AMCUNT	CASH RECEIVED AND DISBURSED					
		DATE	NAME	RECEIVED		DISBURSED	
Fine,							
Clerk,							
Marshal,							
Attorney,							
Commissioner's Court,							
Witnesses,							

DATE	PROCEEDINGS
1/21/72	Before NEAHER, J.- Indictment filed.
2-5-72	Before COSTANTINO, J. * Case called. Both defts present. Court enters a plea of not guilty on behalf of both defts. 30 days for motions. Bail set at \$25,000 - \$5,000 cash.
12-7-72	Magistrate's file 72 M 2037 inserted into CR file.
12/7/72	Order for acceptance of cash bail (By SCHIFFMAN , MAG.) for deft CRUZ ESCOBAR NEGRON. Filed.
12-12-72	Notice of Readiness for Trial filed.
12-21-72	Magistrate's file 72 M 2174 inserted into CR file.
12/29/72	Demand for Bill of Particulars filed.
2/13/73	Govt's answers to defts motion for a bill of particulars filed.
2-14-73	Notice of Motion filed, ret. 2-20-73, for suppressing evidence, etc.

72CR1245

DATE	PROCEEDINGS
2/20/73	Before COSTANTINO, J.- Case called- Defts and atty present-Deft NEGRON having been advised of his rights by the court and on his own behalf withdraws his plea of not guilty and enters a plea of guilty as charged- Sentence adjd without date bail cont'd .
2/20/73	Before COSTANTINO, J.- Case called- Deft's motion to suppress evidence, with drawn.
XXXXXXXXXXXXXXXXXXXXXXXXXXXX	
2/27/73	By COSTANTINO, J.- Order filed, that CRUZ ESCOBAR NEGRON be permitted to travel to Puerto Rico on the 1st of March, 1973 on condition that he return on the 22nd day of March, 1973: and it is further ordered that bail conditions remain in full force and effect and the deft report to the Office of the US Atty. upon his return.
4-13-73	Before COSTANTINO J - Case called - Deft NEGRON & counsel Jack Solomon present. Deft sentenced to imprisonment for 12 years and special parole of 5 years pursuant to 18: 4208(a)(2).
4-13-73	Judgment & Commitment filed - certified copies to Marshal (NEGRON)
4-13-73	Before Costantino J - On motion of Asst US Atty R.De Petris the Indictment is dismissed as to deft GUZMAN.
4-13-73	By Costantino J - Order of dismissal filed (GUZMAN)
4/18/73	By BARTELS, J.- Order Releasing Bail filed. (NEGRON)
4/20/73	Certified copy of Judgment and Commitment ret'd and filed. Deft delivered Fed. Det. Hqs. (NEGRON)
XXXXXXXX	
5/24/73	Stenographer's transcript of 2/20/73 filed.
5/18/73	Stenographer's transcript of 4/13/73 filed.
CH .	
7/9/73	Letter filed, treated as Rule 35 (NEGRON)
8/2/73	By COSTANTINO, J.- Memorandum and Order ^{filed} for reduction of sentence denied (Deft NEGRON) (Copy of Order forwarded to Deft as ordered)

3) B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CRUZ ESCOBAR NEGRON

v.

UNITED STATES OF AMERICA

-----X
COSTANTINO, D.J.

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JAN 13 1976 ★

TIME A.M.
P.M.
75-C-138

MEMORANDUM and
ORDER

JAN 12 1976

The petitioner, Cruz Escobar Negrón, was sentenced by this court on April 13, 1973 to 12 years imprisonment and a 5-year special parole term after he had previously withdrawn his not guilty plea and pled guilty to a one count indictment charging possession of heroin, 21 U.S.C. §891(a) (1) and (2). At the time of pleading, this court conducted an extensive discussion with the petitioner in an effort to insure that the plea was made voluntarily and with full knowledge of its consequences. In advising petitioner of the maximum sentence he could receive, the court stated:

Number two, you are subject to a \$25,000 fine and up to 15 years in jail or both with a special parole term. That is the maximum. That is all in the court's discretion as to what happens to you. Do you understand that?

This court subsequently sentenced petitioner to a term of twelve years in jail and 5 years special parole term. The petitioner now seeks to vacate his sentence pursuant to 28 U.S.C. § 2255 and Rule 11 of the Federal Rules of Criminal Procedure because of this court's alleged failure to fully explain to him the consequences of a special parole term. He also moves to vacate his sentence because of allegedly erroneous material in his presentence report.

The motion to vacate is denied on both grounds, but the special parole term will be reduced to 3 years.

Ferguson v. United States, 513 F.2d 1011 (2d Cir. 1975) mandates retroactive application of the requirements of Michel v. United States, 507 F.2d 461 (2d Cir. 1974) as to informing the defendant of the consequences of the imposition of a special parole term. Because the sentence is now reduced to 12 years with a 3-year special parole term, any error made when accepting the plea was harmless. Aviles v. United States, 75-C-3094, 72-CR-115, (unpublished opinion, S.D.N.Y., Palmieri, J., October 21, 1974); see Poerio v. United States, 75-C-826 (unpublished opinion,

E.D.N.Y., Judd, J., September 16, 1975). More than two years have passed since petitioner was sentenced and the government has dropped pending charges against Lydia Guzman, petitioner's alleged "paramour" as a result of petitioner's plea. The court will therefore not permit petitioner to replead to this one count indictment and force the government to reassemble its evidence merely because of a harmless technical error.

Petitioner's second contention, that the sentence should be vacated because of errors in the presentence report, is without merit. As this court stated in a Memorandum and Order signed August 2, 1973, "[m]edical reports indicate that the petitioner was examined and not addicted at the time of sentence." No new evidence has been presented to indicate that this finding was erroneous.

Accordingly, petitioner's sentence is modified only to the extent that the 5 year special parole term is reduced to 3 years. No other relief is granted.

So ordered.


U. S. D. J.

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 ----- X

4 United States of America,
5 Plaintiff,

6 - against -

7 LYDIA GUZMAN, a/k/a CARMEN RIVERA
8 and CRUZ ESCOBAR-NEGRON, a/k/a
9 CARLOS RIVERA,

10 Defendants.

11 ----- X

12 United States Courthouse
13 Brooklyn, New York

14 February 20, 1973
15 10:00 a.m.

16
17 B e f o r e :

18 HON. MARK A. CONSTANTINO, U.S.D.J.
19
20
21
22

23 ILLAN GINSBERG
24 Acting Official Court Reporter
25

3
720124 C
FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ MAY 21 1973 ★

TIME A.M. _____
P.M. _____

1 A P P E A R A N C E S :

2

3

4

ROBERT A. MORSE, U.S. Attorney

5

BY: PAUL LAZARUS, AUSA

6

7

SOLOMON & ESTEVE, ESQS.
Attorneys for Defendants
305 Broadway
New York, New York

8

9

BY: JACK SOLOMON, ESQ.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

BEST COPY AVAILABLE

1
2 THE CLERK: U.S.A. versus Lydia Guzman,
3 a/k/a Carmen Rivera and Cruz Escobar-Negron,
4 a/k/a Carlos Rivera.

5 MR. SOLOMON: Your Honor, may I ask that
6 we pass our case because the boy's mother came
7 up from Puerto Rico and I would like an
8 opportunity during a recess to talk to Mr.
9 Lazarus for a few moments.

10 THE COURT: All right. Second call.

11 (pause)

12 MR. SOLOMON: Your Honor, at this time
13 after consultation with my client, Cruz Escobar-
14 Negron, I move this Court that we withdraw our
15 plea of not guilty and in its place your Honor,
16 plead guilty to the indictment.

17 THE COURT: To the indictment?

18 MR. LAZARUS: It is a one count indictment,
19 your Honor.

20 MR. SOLOMON: Your Honor, at this time
21 also, if I may, although I am not the attorney
22 for Lydia Guzman, it is my understanding that
23 one of the inducements for my client's behavior
24 here is that a motion will be made -- the
25 United States Attorney will move this Court to

1
2 understand that?

3 MR. SOLOMON: Yes, I just wanted it sort
4 of made clear --

5 THE COURT: I am going to talk to him
6 now. I cannot accept the plea without going
7 through the strict form and have him understand
8 the plea and give the reasons for his plea.

9 That is Mr. Negron?

10 THE DEFENDANT NEGRON: Yes sir.

11 THE COURT: Do you understand that you
12 originally plead not guilty to this indictment
13 found against you by the grand jury of the
14 eastern district, federal court of the United
15 States? Do you understand that?

16 THE DEFENDANT NEGRON: Yes.

17 THE COURT: And the lawyer advises this
18 Court that you are pleading guilty to this one
19 count indictment and withdrawing the plea of
20 not guilty. Do you understand that?

21 THE DEFENDANT NEGRON: Yes.

22 THE COURT: Do you understand that in any
23 event, you have the right to continue to plea
24 not guilty and you have a right to have a jury
25 selected and try your case and you have a right

1
2 dismiss all charges against Lydia Guzman
3 also known as Carmen Rivera.

4 MR. LAZARUS: I don't know if that is the
5 inducement. I assume that he is pleading guilty
6 because he is guilty.

7 We did, however, inform Mr. Solomon that
8 if Mr. Negron was going to plead, at the proper
9 time the case against Miss Guzman would be
10 dismissed. Now, we do not dismiss cases out
11 of hand. I have to send the forms to Washington.
12 I do not anticipate a problem.

13 THE COURT: In any event, the defendants
14 have to plead and I will have you, Mr. Solomon
15 stand in on her behalf, on behalf of Lydia
16 Guzman, for this purpose, but as far as the
17 sentencing of this defendant, I make no promises
18 with respect to sentence.

19 MR. SOLOMON: That we are aware of, your
20 Honor.

21 THE COURT: Likewise, if Washington sees
22 fit to fight the United States Attorney's
23 application to dismiss against Miss Rivera or
24 Miss Guzman, that is Washington's business and
25 the Court will accept their final say. Do you

1
2 to have the witnesses presented against you to
3 testify and prove your innocence or guilt. Do
4 you understand that?

5 THE DEFENDANT NEGRO: Yes.

6 THE COURT: And you understand that there
7 is a presumption of innocence accompanying you
8 and which runs throughout the entire trial and
9 that not until the government proves to the
10 satisfaction of the jury that you are guilty would
11 you be found so and if they failed to do that you
12 would be acquitted. Now, do you want a trial by
13 jury?

14 THE DEFENDANT NEGRO: No sir.

15 THE COURT: Do you understand if you had
16 a trial you need not get on the stand and the
17 jury could not say, "There must be something to
18 his not testifying"? You could have sat in that
19 chair and not said a word. Do you understand that?

20 THE DEFENDANT NEGRO: Yes.

21 THE COURT: Now, before the Court accepts
22 the plea you must tell me in your own words what
23 you say you have done wrong in violation of the
24 United States law. What did you do?

25 THE DEFENDANT NEGRO: I tell you the

1
2 truth. I plead guilty because I know I did a
3 crime --

4 THE COURT: Just tell me what you did.

5 THE DEFENDANT NEGRON: I forced my wife
6 to possess narcotics and take it to Puerto Rico
7 for me.

8 THE COURT: What kind?

9 THE DEFENDANT NEGRON: Heroin.

10 THE COURT: Do you remember how much?

11 THE DEFENDANT NEGRON: I don't -- about
12 five ounces. I passed this because I use
13 narcotics. You study my case and see if I can
14 go to the hospital.

15 THE COURT: Are you an addict?

16 THE DEFENDANT NEGRON: Yes.

17 THE COURT: For how long have you been
18 an addict?

19 THE DEFENDANT NEGRON: I started when I
20 was thirteen, fourteen.

21 THE COURT: Have you had any treatment or
22 been incarcerated for it, for any reason?

23 THE DEFENDANT NEGRON: I went one time,
24 three months in the hospital in Puerto Rico but
25 I quit and started using dope again.

1
2 THE COURT: Do you have any objection if
3 the Court sees fit to have you examined to see
4 if you are an narcotics addict and be certified
5 as one? You have no objection to that?

6 THE DEFENDANT NEGRON: Oh, no sir. I
7 have no objection.

8 THE COURT: All right. Let's see now.
9 Now, at this time you had this heroin and your
10 wife was a party to it. You knew that it was
11 wrong to possess heroin?

12 THE DEFENDANT NEGRON: Yes sir.

13 THE COURT: And to distribute heroin?

14 THE DEFENDANT NEGRON: Yes sir.

15 THE COURT: And you knew it was a violation
16 of the laws of the United States?

17 THE DEFENDANT NEGRON: Yes sir.

18 THE COURT: And you knew it was a crime?

19 THE DEFENDANT NEGRON: Yes.

20 THE COURT: And you knew that crime could
21 subject you to a jail term, right?

22 DEFENDANT NEGRON: Yes.

23 THE COURT: This Court now advises you, and
24 this is the maximum -- well, there are several
25 things. You can be examined and found to be an

1
2 addict and the Court determines what to do with
3 you.

4 Number two, you are subject to a \$25,000.00
5 fine and up to 15 years in jail or both with a
6 special parole term. That is the maximum. That
7 is all in the Court's discretion as to what
8 happens to you. Do you understand that?

9 THE DEFENDANT NEGRON: Yes.

10 THE COURT: Now I make no promises, none.
11 I make no promises whatsoever and if anybody said
12 to you they think they know what the Court is
13 going to do, that is not true because I speak
14 to no one about the cases.

15 Now, you talk to probation and be as
16 honest as you can with the probation department.

17 You are 24?

18 THE DEFENDANT NEGRON: I am 24.

19 THE COURT: There is a section of the law
20 that says you may come under the Youth Correction
21 Act and you may be sentenced as a youthful offender
22 for a term not to exceed six years. Do you
23 understand that?

24 THE DEFENDANT NEGRON: Yes.

25 THE COURT: Also, you can be placed on

1
2 probation or parole and if the Court should
3 sentence you under the Youth Correction Act at
4 the time you have completed your term and have
5 become 26 years of age there would no longer be
6 a charge of a criminal act against you. That
7 again, is within the Court's discretion and the
8 Court makes no promises to you.

9 THE DEFENDANT NEGRON: Yes.

10 THE COURT: The Court accepts the plea.

11 MR. SOLOMON: In addition to your
12 considering the Youth Correction Act would your
13 Honor also consider any possibility under the
14 Nara Act at the appropriate time?

15 THE COURT: That is why I asked if he had
16 any objection to being examined as an addict and
17 if it is so, the Court will consider the Nara
18 Act itself.

19 MR. SOLOMON: Is the date for sentence
20 set now?

21 THE COURT: No. We will set a sentence
22 date --

23 MR. SOLOMON: I would have one request.
24 He has two children and an 87 year old grandmother.
25 Could he visit, if he so desires --

1
2 THE COURT: If he desires that it would
3 have to be with the approval of the United States
4 Attorney and I would have to entertain the motion.

5 MR. SOLOMON: Would you give your
6 permission for that, Mr. Lazarus?

7 MR. LAZARUS: For certain dates, yes.

8 THE COURT: As to her, Lydia Guzman, she
9 still pleads not guilty, subject to what happens.

10 MR. SOLOMON: Your Honor, I would like to
11 withdraw the motion to suppress that was on for
12 today.

13 THE COURT: All right. Motion to suppress
14 withdrawn.

15
16 * * * * *

17
18
19 I hereby certify that the foregoing is
20 a true and accurate transcript from my
21 stenographic notes in this proceeding.

22 *Glenn L. King*

23 Official Court Reporter
24 U. S. District Court
25

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3
FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JUN 16 1973 ★

4 UNITED STATES OF AMERICA,
5 -against-
6 CRUZ ESCOBAR-NEGROM, a/k/a
CARLOS RIVERA,
7 Defendant.

: TIME A.M. _____
: P.M. _____
: 72 CR 1245

D

8 -----x

9 United States Courthouse
10 Brooklyn, New York
11 April 13, 1973.

12
13 B e f o r e:

14 HONORABLE MARK COSTANTINO, U.S.D.J.

15
16
17
18
19
20
21 BURT SULZER
22 OFFICIAL COURT REPORTER
23
24
25

APPEARANCES:

ROBERT A. MOPSE, ESQ.,
United States Attorney for the
Eastern District of New York,

BY: RONALD DE PETRIS, ESQ.,
Assistant United States Attorney.

SOLOMON & ESTEVE, ESQ.
Attorneys for Defendants
305 Broadway, New York, N.Y.

BY: JACK SOLOMON, ESQ.,
Of Counsel.

.

1
2 THE COURT: All right. What do you have
3 to say?

4 MR. SOLOMON: Your Honor, we are here today
5 for the sentencing of Cruz Escobar-Negron. I
6 think that in addition to the reports that your
7 Honor has, and I don't want to take up the time of
8 the Court, other than to tell you three salient
9 things, your Honor, that I hope you will consider
10 in the papers before you.

11 Your Honor, this young man spent three
12 years in Atlanta prison in the previous conflict
13 he had with the law involving a \$51 forged check,
14 and I think your Honor will grant the fact that
15 despite the fact that the crime was committed,
16 in my opinion, the severity of this sentence did
17 nothing that would assist this young man --

18 THE COURT: You say he only committed one
19 previous crime?

20 MR. SOLOMON: This is my understanding,
21 your Honor.

22 THE COURT: Did you look at his probation
23 report?

24 He has a rap sheet longer than the Police
25 Department.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

In Puerto Rico, if he goes back there, they may throw the key away on him. He is also wanted for violation of parole in the Supreme Court in Manhattan, he absconded from the drug addiction center, he is wanted there.

He has had all kinds of burglaries, larcenies; he has been lucky, had some dismissals, maybe they were too busy to try him --

MR. SOLOMON: The one time he spent time in prison, your Honor --

THE COURT: We are not going to give him any Eagle Scout badges for the rest of it, no merit badges here for that. He has a long career of challenging the law. He has been very successful in his challenges, very, very successful. He has evidently had some very fine attorneys and I congratulate them, but on this one, I will hear you now.

MR. SOLOMON: I have not represented him before, your Honor.

THE COURT: Take this and look at it. I will give you second call to give you an opportunity to discuss this with your client.

MR. SOLOMON: May I have that opportunity, your Honor?

1
2 THE COURT: Absolutely.

3 (A recess was taken.)

4 THE CLERK: Second call, criminal cause for
5 sentence, United States of America versus Cruz Negron.

6 THE COURT: What do you have to say now on
7 behalf of your client?

8 MR. SOLOMON: Your Honor, I never had any
9 intention to mislead the Court, your Honor.

10 THE COURT: I knew immediately when you said
11 that you had not been revealed any of the facts
12 whatsoever --

13 MR. SOLOMON: In all honesty, I think my
14 client had misunderstood me when I interrogated
15 him. His answer when I spoke to him outside, is
16 this is the first Federal offense where he has
17 served time in a Federal prison, the Atlanta
18 situation, for three years.

19 Your Honor, you have two pages and 21
20 arrests in connection with this young man, running
21 the gamut of every petty item. However, during
22 the time that he has been before this Court, I
23 want you to know, your Honor, that after he pleaded
24 guilty, he received the permission of the Court
25 and did go to Puerto Rico for three years. He is

1
2 back here.

3 To that degree, and to other aspects of
4 the case, there is a degree of integrity, your
5 Honor, despite the two pages you have, this man
6 is a reasonably intelligent young man, and his
7 answer to all these charges, your Honor, he is
8 an addict, your Honor, and this is how he feels
9 and has this need to feed it.

10 He says that Atlanta -- in Atlanta, he
11 attempted on a number of occasions to obtain help.
12 They did not have a drug addiction rehabilitation
13 program at a hospital at Atlanta. We are hoping,
14 your Honor, in view of the fact that the crime here
15 was committed prior to his 26th birthday, that there
16 is some form of assistance the Court can give him
17 in connection with rehabilitation either under the
18 Youth Correction Act or in some form of hospitaliza-
19 tion, your Honor.

20 The other two things I would like to say, your
21 Honor, is this: He has worked regularly while here.
22 I think if you view his probation report, you will
23 see much of his problems occurred in Puerto Rico,
24 much of his problems occurred when he was with his
25 mother.

1
2 His father, who has a family of his own,
3 has been in this country for over twenty five
4 years, your Honor, and is willing to do anything
5 and everything to help this young man.

6 His father is in court here today, your
7 Honor, and was here in court previously. I am
8 hoping, your Honor, you will consider these factors
9 together with the fact, your Honor, he has two
10 children with his common-law wife at present, and
11 a long incarceration will not help as much as
12 the desire to help them, your Honor.

13 THE COURT: What does he have to say in
14 his own behalf? Do you wish to say anything?

15 THE DEFENDANT: Well, I know I make a
16 lot of mistakes my life. But I am positive, all
17 my mistake is because I am being using drugs. If
18 I am not using drug, I know all that crime I
19 committed, I no commit it before.

20 I got my children, I love too much my
21 children and my wife. I would like your Honor
22 to give me a chance for the hospital, because I
23 know in a hospital I can make better for my mind,
24 you know, because in the penitentiary, I be there
25 before in Atlanta, and all I got to watch over

1
2 there, I am too young, I got to watch everybody
3 over there, because, you know, they know I am too
4 young when they send me over there.

5 PROBATION OFFICER: May I be heard for
6 a second in reference to the defendant's contention
7 that he was an addict?

8 It may be noted that he was interviewed
9 at Federal Detention Headquarters immediately after
10 his arrest, and he denied using drugs, and he was
11 classified not as an addict.

12 MR. SOLOMON: In that same report, he has
13 always said he was an addict. I read this this
14 morning, and on one of the pages, he has said in
15 the interview, he had both at the time of his
16 arrest, and with the Probation Department, he has
17 said he was an addict and that he wanted aid.

18 We are willing to submit his arm, if your
19 Honor would like to see it, or any medical evidence
20 necessary.

21 Your Honor, this man is not merely saying
22 he is an addict, from a standpoint of throwing
23 himself to the dogs, your Honor. The man, I have
24 no doubt, is an addict.

25 THE COURT: You say his arms indicate that now?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. SOLOMON: Could you show his Honor?

THE DEFENDANT: That's my old track over there (indicating).

MR. SOLOMON: He is showing you the tracks here.

PROBATION OFFICER: There is no indication of any recent needle marks.

THE COURT: Those are old, old tracks.

Those are at least a year old, those tracks.

MR. SOLOMON: He is willing to submit to any test your Honor would like to show that he is an addict.

THE COURT: He will have to do that in prison. He is not going to do it here.

MR. SOLOMON: I see the --

THE COURT: Five and a half ounces of heroin is enough for anybody to be put away. They complain about one ounce of heroin. Five and a half ounces is a lot of heroin.

He was going into the business and he intended to stay in that business. His record is replete with all of his background, and it may very well be petty larceny was started out in order to get monies to take care of his habit, but then he graduated.

1
2 He finally graduated. He was going to help
3 everybody else, too, by selling it. He is a graduate.
4 I am coining all new words this morning, he is a
5 graduate, that's what he is.

6 MR. SOLOMON: Twenty five year old male, to
7 have spent --

8 THE COURT: He went from the user to the
9 graduate school of the pusher, and that's what he is.
10 This Court is ready to sentence him.

11 This Court sentences him to twelve years in
12 jail and five years special parole. ✓

13 MR. SOLOMON: Your Honor, at this time, I
14 also move to dismiss, although I am not formally
15 retained and never have been retained --

16 MR. DE PETRIS: Your Honor, at this time,
17 the Government having received authorization from
18 Washington, and under the procedures involved, we
19 would move to dismiss the indictment against Lydia
20 Guzman.

21 THE COURT: The indictment against Lydia
22 Guzman is dismissed.

23 In any event, the defendant is advised at
24 this time, that he has a right to appeal from the
25 Court's sentence. He has ten days to appeal.

1 MR. SOLOMON: Since I am not undertaking,
2 could your Honor give him a thirty day period in
3 which to do this if he seeks counsel and representa-
4 tion?
5

6 THE COURT: Surely. Thirty days.

7 MR. DE PETRIS: It is only after trial, your
8 Honor.

9 THE COURT: There is no right to appeal here,
10 there was a plea. He can move to modify the sentence.

11 MR. SOLOMON: Is it necessary to bring up
12 Lydia Cruz or is it something --

13 THE DEFENDANT: Guzman.

14 THE COURT: It has been dismissed against her.

15 MR. SOLOMON: Thank you very much.
16
17
18
19
20
21
22
23
24
25

I HEREBY CERTIFY THAT THE ABOVE COPY IS A TRUE AND
ACCURATE TRANSCRIPTION OF THE VERBATIM NOTES TAKEN
AT EACH HEARING.

[Signature]
CLERK OF COURT

CERTIFICATE OF SERVICE

March 17, 1977

I certify that a copy of this brief and appendix
has been mailed to the United States Attorney for the
Eastern District of New York.

Reida Smolberg